



**Waverley Borough Council**  
**Local Planning Enforcement Plan**  
( \_\_\_\_\_ 2022)

## Contents

1. Introduction
2. A proportionate response
3. Investigating an alleged breach of planning control
4. Monitoring the implementation of planning permissions
5. How to report a suspected breach of planning control
6. The investigation process
7. Progress on enforcement cases
8. Enforcement tools available to the Council
9. Monitoring planning enforcement performance
10. Updating the Local Planning Enforcement Plan

## 1. Introduction

Waverley Borough Council has responsibility for investigating breaches of planning control and this Plan is intended to set out how we operate this function, the priorities we have set for undertaking investigation into alleged breaches and the various tools at the Council's disposal.

The Planning enforcement function contributes to the Council's overall vision in the [Waverley Borough Council Corporate Strategy 2020-25](#), as set out below:

***“Our vision is that Waverley will be environmentally, economically and financially sustainable with healthy inclusive communities and housing available for all who need it.”***

The Corporate Strategy notes that the Council will, amongst other aims, promote:

- effective strategic planning and development management which supports the planning and infrastructure needs of local communities
- a sense of responsibility by all for our environment, promoting biodiversity, championing the green economy and protecting our planet
- the health and wellbeing of our communities.

With this in mind, whilst planning enforcement is not a statutory function of the Council, Waverley takes breaches of planning control very seriously and it is our policy to exercise powers appropriately and rigorously to seek to ensure development takes place in accordance with approvals and that any allegations of potential planning breaches are properly investigated and appropriate, reasonable and proportionate action is taken, where necessary, when it is deemed expedient and in the public interest to do so.

Dealing appropriately with breaches of planning control and ensuring compliance is essential to ensure that the planning process as a whole remains credible.

The Waverley Local Planning Enforcement Plan identifies local priorities for enforcement action in order that the Council's enforcement resources are put to the best use in dealing with breaches of planning control that threaten protected features, the quality of the natural and built environment, or the amenities of Borough residents. This Plan has been devised in accordance with the advice contained within the [National Planning Policy Framework](#) (NPPF) (July 2021) which states:

*“Effective enforcement is important to maintain public confidence in the planning system. Enforcement action is discretionary, and local planning authorities should act proportionately in responding to suspected breaches of planning control. They should consider publishing a local enforcement plan to manage enforcement proactively, in a way that is appropriate to their area. This should set out how they*

*will monitor the implementation of planning permissions, investigate alleged cases of unauthorised development and take action where appropriate.” (Paragraph 59)*

The planning system operates to regulate development and the use of land having regard to the development plan and other material planning considerations. As set out in the NPPF, the effective and proper enforcement of planning control is essential to public confidence in the planning system and our aim is to protect the interests of our environment, residents, visitors, and businesses from potentially harmful effects of unauthorised development.

It should, however, be noted that planning enforcement is not a punitive measure, the main purpose of the system is to remedy breaches, not to simply punish those responsible for a breach of planning control.

It is an important principle of the planning system that the use of planning enforcement action is a discretionary power, and the Council should act proportionately in responding to suspected breaches of planning control, as set out in paragraph 59 of the NPPF and discussed in Section 2 of this Plan (below).

The aim of this document is to set out the Council’s specific plan for the enforcement of planning control. This will ensure that councillors and officers, external agencies and our residents and businesses are aware of our general approach to planning enforcement and what we consider to be a priority in this regard. The Plan is also intended to manage the community’s expectations as to when, and how quickly, we will act to a complaint of an alleged planning breach and what level of service they can expect from the Council.

### **What is a planning breach?**

The primary legislation for planning enforcement is set out in Part VII of the Town and Country Planning Act 1990 (as amended) (TCPA). The TCPA states that planning permission is required for development. Section 55 defines development as:

*“the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land.”*

A breach of planning control is defined in [section 17661A of the Town and Country Planning Act 1990](#) as:

- the carrying out of development without the required planning permission; or
- failing to comply with any condition or limitation subject to which planning permission has been granted.

Any contravention of the limitations on, or conditions belonging to, permitted development rights, under the [Town and Country Planning \(General Permitted Development\) \(England\) Order 2015](#), constitutes a breach of planning control against which enforcement action may be taken.

The majority of planning enforcement investigations therefore involve one of the following alleged breaches:

- development (either operational development, such as building a structure, or a material change in use of land) without planning permission;
- development that has not been carried out in accordance with an approved planning permission; or
- non-compliance with a condition or legal agreement attached to a permission.

Generally, it is not illegal to carry out development without planning permission. However, carrying out development without the necessary permissions can have significant impacts on the ability to sell a property or land and can result in formal enforcement potentially leading to prosecution, demolition, or even imprisonment.

The basic principle of planning law is that it is generally not an offence to carry out works without planning permission. Whilst such development remains unauthorised, unless regularised, local planning authorities must consider the expediency of taking action whilst having regard to the development plan and any other material planning considerations. A criminal offence will only arise in relation to the above matters when a statutory notice has been issued and the owner or occupier has failed to comply – or in certain specific cases, such as unauthorised works to a tree that is the subject of a Tree Preservation Order, works to a listed building without the necessary consent, or the display of an unauthorised advertisement(s).

### **What is not a breach of planning control?**

Councils can receive complaints in relation to matters that are not breaches of planning control. Often there is other legislation that covers and controls the matter and the issue does not relate to 'development' (as defined in the previous section).

The following are some examples of cases which the planning enforcement service does not cover:

- Neighbour nuisance, boundary and land ownership disputes – these are civil matters. Further advice should be obtained from an independent legal advisor solicitor or the Citizens Advice Bureau;

- Use of/or development on the highway, footway or verge that is covered by highway legislation – please contact Surrey County Council;
- Dangerous structures – please contact our Building Control service;
- Fly tipping;
- Any matter covered by other legislation, such as noise and smell, and enforced by other Council services or external agencies and organisations.

### **What is this Plan for?**

This Plan will provide clarity on the following:

- The definition of a ‘proportionate response’ when investigating an alleged breach of planning control.
- How we will manage enforcement proactively in a way that is appropriate to the borough.
- How we investigate alleged breaches of planning control.
- How we will monitor implementation of planning permissions.
- Set out the powers available to us where it is considered appropriate to take action.

The primary function of enforcement action is to protect the environment in the public interest. To do this, we must be consistent and act proportionately.

## **2. A proportionate response**

Powers to enforce planning controls are given by the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991, the Planning and Compulsory Purchase Act 2004, and the Localism Act 2011.

The Council has responsibility for taking whatever enforcement action may be necessary and available to it, in the public interest, in its administrative areas. Alleged breaches of planning control can be tackled in a range of ways, but councils must act in a proportionate manner.

This Plan defines the appropriate form of response to various breaches of planning control and how we respond. This is determined by the guiding principle that the response to a breach of planning control should be proportionate to the harm it causes. It is never considered a sensible use of limited public resources, to pursue enforcement action against a development that would have been granted planning permission, except where the act of granting planning permission would have allowed necessary controls to be secured, normally through the imposition of conditions. In all cases, enforcement action should not be viewed as punishment, but what is necessary, in order to protect both the built and natural environment, taking into consideration matters such as visual and residential amenities.

A planning application is the most appropriate way to consider the merits of proposed development and to allow affected neighbours and other interested parties to have their say. It is therefore fitting to apply the same approach to development already carried out and for the Council to encourage the submission of retrospective planning applications where they are considered likely to be acceptable.

The exception is where the Council considers there is no real prospect of planning permission being granted. In these instances, we will proceed to enforcement action as a matter of course, where negotiations to remedy the harm being caused have taken place and have not been successful.

However, any developer still has the right to apply for planning permission and if they do, the Council must deal with the application fairly before proceeding with any necessary enforcement action. In all cases, the Council will judge the planning merits of the development, and not how that development came about.

There are three priority levels of enforcement cases:

**Priority One – Major – First contact or site visit within 1 working day from receipt of complaint – such as:**

- works that are irreversible or irreplaceable or constitute a serious breach;
- unauthorised works to a Listed Building;
- unauthorised works to trees either protected by a TPO or located within Conservation Area;
- non-compliance with outstanding 'live' Enforcement Notices.

**Priority Two – Medium – First contact or site visit within 5 working days from receipt of complaint – such as:**

- development causing serious harm to the amenities of neighbours or to the environment;
- unsightly buildings or untidy land that are causing serious harm to the amenity of neighbours or to the environment;
- development being built not in accordance with the approved plans or material breaches of conditions, during the construction process.
- alleged breaches of Article 4 Directions;

**Priority Three – Low – First contact or site visit within 10 working days from receipt of complaint – such as:**

Any other allegations which have not been classified as high or medium priority, including (but not limited to):

- advertisements;
- businesses being operated from home;

- means of enclosure (gates, fences, walls);
- satellite dishes;
- new accesses;
- sheds/outbuildings;
- high hedge complaints; and
- any other alleged unauthorised development or activity having limited impact on residential amenity.

The case officer will then make an assessment, in relation to planning legislation, local policy and evidence of whether a breach of planning control has taken place. At this stage, we will notify the complainant of the proposed action to be taken.

### **3. Investigating an alleged breach of planning control**

The power to take enforcement action is entirely discretionary and comes from section 172 of the Town and Country Planning Act 1990.

We will follow the relevant legislation and consider the harm created when undertaking enforcement action and whether it is appropriate to take formal action. In deciding whether it is in the public interest to prosecute, we will follow the Code for Practice for Crown Prosecutors, the general principles of which are a two-stage test: the evidential and public interest tests.

In considering whether or not it is appropriate to take enforcement action, we will have regard to the Government guidance [enforcement and post-permission matters](#) within the Government's [planning practice guidance](#), the policies in the [National Planning Policy Framework](#), the [Waverley Borough Local Plan Part 1 2018](#), a relevant, made [Neighbourhood Plan](#), the saved policies in [Waverley Borough Local Plan 2002](#), and any updated relevant Council policies, together with any relevant material considerations.

The key consideration will be whether the breach of control would unacceptably affect public amenity, the environment, or the existing use of land and buildings meriting protection in the public interest.

The Council will work within the legal framework, having full regard to legislation, relevant case law and planning appeal decisions. It will also take into account other legislation that impact on enforcement work, such as:

- The Human Rights Act 1998;
- Public Sector Equality Duty under s149 of Equality Act 2010;
- The Criminal Procedure and Investigations Act 1996 (CPIA);
- The Police and Criminal Evidence Act 1984 (PACE); and
- The Regulation of Investigatory Powers Act 2000 (RIPA)



These require that a thorough investigation of the full facts and circumstances surrounding a breach is carried out prior to taking formal action.

More than half of complaints made are found not to be breaches of planning control and some complaints made relate to minor breaches and can arise from an understandable lack of awareness of planning controls or misunderstandings over what is taking place and can be exacerbated by existing neighbour disputes.

Whilst the Council is committed to investigating complaints, its resources must be used appropriately to (a) allow us to concentrate on serious breaches; and (b) avoid the Council being brought into disrepute through abuse of its enforcement powers. Initiating enforcement action when a matter can be resolved through a retrospective application and the imposition of necessary conditions would be seen as unreasonable behaviour by appeal inspectors and the courts and could lead to an award of costs against the Council. To maintain focus on agreed priorities, the Council may decline to pursue cases that appear to arise from repetitive or vexatious complaints, or that are motivated by disputes between individuals or businesses. An explanation of the breaches that can/cannot be investigated together with other useful links can be found on our [Planning Enforcement web page](#).

### **Time limits for taking formal action**

Section 171B of the Town and Country Planning Act (as amended) sets out time limits for taking enforcement action. The Council is unable to legally serve a notice after four years where the breach of planning control relates to material operational development (e.g. extensions to dwellings, new buildings and laying hardstanding); or the material change of use of any building to a single dwellinghouse. Other unauthorised changes of use of land and buildings and breaches of conditions are currently subject to a ten year time limit for enforcement, before they are deemed 'lawful' and gain immunity from formal enforcement action.

The landowner can apply for a Certificate of Lawful Existing Use or Development (CLEUD) after the relevant four/ten-year period to seek to regularise the situation. This involves providing sufficient evidence to demonstrate that, on the balance of probabilities, the breach of planning control has occurred for the relevant time period and has obtained immunity.

Serving an enforcement notice in respect of a particular development stops the clock in relation to the time limits outlined. Therefore, where the Council feels a breach may be getting close to the relevant four/ten-year time limit (as applicable to the nature of the development) we may seek to take urgent enforcement action to seek to prevent the development from becoming 'lawful' and, therefore, immune from action.

## **Failure to comply with formal notices**

Where a notice has been served and has not been complied with, there are three main options available to the Council to attempt to resolve the breach should it be considered expedient and in the public interest.

### Prosecution

We will consider commencing a prosecution in the Courts against any person who fails to comply with the requirement(s) of any of the following notices where the date for compliance has passed and the requirements have not been adhered to:

- Enforcement Notice
- Listed Building Enforcement Notice
- Planning Contravention Notice
- Breach of Condition Notice
- Section 215 Notice
- Stop Notice

Further information about each of the above remedies can be found in Section 8 of this Local Planning Enforcement Plan.

Before formally commencing legal action, which can be costly and resource/time intensive, we need to be satisfied that there is sufficient evidence to offer a realistic prospect of conviction and that legal proceedings are in the public interest.

### Direct action

Where any steps required by an Enforcement Notice or Section 215 Notice have not been taken within the compliance period (other than the discontinuance of the use of land), we will consider whether it is expedient to exercise our powers under section 178 and section 219 of the Town and Country Planning Act (as amended) respectively to:

- enter the land and take the steps to remedy the harm; and
- recover from the person who is the owner of the land any expenses reasonably incurred by the Council in doing so.

### Injunction

Where the special circumstances of the case suggest direct action or prosecution would not be an effective remedy, we will consider applying to the Court for an injunction under section 187B of the Town and Country Planning Act (as amended).

## **4. Monitoring the implementation of planning permissions**

Whilst the Council does not have the resources to monitor all approved development schemes in the Borough, it will proactively monitor major development sites where appropriate and resources permitting. However, we are also reliant on the vigilance and support of our local communities to help us identify potential breaches. The majority of complaints received are reported by members of the public and need to be investigated reactively. Each valid complaint will result in a complaint file being set up according to priority level and investigated within the relevant timescales. The complainant will be updated on progress and the outcome of the investigation.

## **5. How to report a suspected breach of planning control**

Our [Planning Enforcement web page](#) gives more information of planning enforcement and breaches of planning control. The best way to report a breach is to use our [online form](#). Sufficient details of the site/development in question must be provided to enable us to properly investigate the alleged breach and you may be asked to provide further information.

We are not able to accept anonymous complaints or reports as we need complainants' details to assess the harm, provide updates and request further information.

Complainants' details are kept confidential, although in some circumstances it may be necessary for the complainant to come forward to support the enforcement action upon the service of a notice, appeal, or prosecution.

## **6. The Investigation Process**

The investigations process and the consequential action are shown in the flow diagram in Appendix 1.

Notices issued can be viewed on our [Planning Enforcement Register](#)

## **7. Progress on enforcement cases**

We will make every effort to keep interested parties regularly updated on progress of our investigations. In some circumstances, such as prosecution cases, it may not be possible to give full details for confidentiality reasons.

## **8. Enforcement tools available to the Council**

The following section sets out the various tools that are available to the Council to deal with alleged unauthorised development. In accordance with the need for a proportionate approach, which tool (if any) will be used in each individual case will depend on the circumstances and the level of harm identified.

### **Planning Contravention Notice (PCN)**

This is used to obtain information about alleged unauthorised development and it can be used to invite discussion on how any suspected breach of control may be

remedied. It is normally used to establish the owners and occupiers of land and details of the nature and level of activities that are suspected to be taking place. Failure to respond to a PCN, or the provision of false information, are criminal offences carrying a maximum fine of £1,000 and £5,000 respectively.

### **Enforcement Notice (EN)**

The Council may issue an Enforcement Notice where it considers that there has been a breach of planning control and it is appropriate to issue the Notice. The EN is used to remedy a breach of planning control that is causing serious harm to public amenity. It must specify the date it takes effect (not less than 28 days after service), the steps to be taken and the compliance period. There is a right of appeal to the Planning Inspectorate against the EN, and this suspends the EN's requirements until the appeal is determined.

### **Breach of Condition Notice (BCN)**

This is used to secure compliance with planning conditions and takes effect no less than 28 days after service. It must specify the steps that the Council considers ought to be taken to secure compliance with the specified condition and the period allowed for compliance. There is no right of appeal against a BCN and a failure to comply with it is a criminal offence carrying a maximum fine of £2,500 (May 2013).

### **Stop Notice (SN)**

A Stop Notice can only be served on land where an Enforcement Notice has been served and is used as an effective way of stopping an activity that is causing serious harm to public amenity. It prohibits the activity taking place on the land but cannot be used to stop the use of any building as a dwelling or any activity that has been carried out for more than four years. There is a risk of the Council being liable to pay compensation if the Enforcement Notice is quashed on appeal or the Notices have to be withdrawn.

### **Temporary Stop Notice (TSN)**

This is used where the Council considers that there has been a breach of planning control and it is necessary, in order to safeguard the amenity of the area, that the activity that amounts to the breach should stop immediately. This Notice differs from the normal Stop Notice powers because it does not have to wait for an Enforcement Notice to be issued. The effect of the TSN is immediate and must prohibit the activity that is in breach, and can be served on any person carrying out the activity, and must be displayed on the site. The TSN is only in effect for 28 days, during which the time the Council must decide whether it is appropriate to serve an Enforcement Notice. TSNs have been used successfully to stop work on development sites when important pre-commencement planning conditions have not been complied with and there is a serious concern relating to issues such as highway safety, contaminated land, or tree protection.

## **Prosecution**

Some breaches of planning control are criminal offences, such as the carrying out of unauthorised works to a listed building or a protected tree, or the display of unauthorised advertisements. It is also an offence not to comply with the requirements of a Breach of Condition Notice, an Enforcement Notice, a Stop Notice, a Temporary Stop Notice, or a Planning Contravention Notice. Legal proceedings can be instigated in the Magistrates' Court and the maximum fine for most of these offences if found guilty in the Magistrates' Court is £20,000 (May 2013) and unlimited if found guilty in the Crown Court. However, maximum fines are less for illegal advertisements, BCNs and failure to complete and return a PCN, which requires the provision of accurate and truthful information to the Council.

## **Injunction**

Section 187B(1) provides a wide-ranging power to obtain a planning enforcement injunction when a court order is needed to restrain a breach of planning control. Applications for an injunction from the courts may be made when it is necessary or appropriate for any actual or apprehended breach of planning control to be restrained, whether or not the Council has exercised or is proposing to exercise any of its other enforcement powers. Any failure to comply with the terms of a court order is a contempt of court and can result in imprisonment.

## **Section 215 Notice (untidy land)**

This Notice requires land, which can include buildings, to be made tidy if the condition of the land is such that it causes harm to the amenity of the area. The Notice must specify the steps that the landowner must take to make the land tidy, such as clearing rubbish or overgrown vegetation

There is a right of appeal against the Notice to the Magistrates' Court. If the Notice is not complied with, the Council can enter the land and carry out the steps in default and recover its reasonable costs incurred by doing so.

## **Listed Building Enforcement Notice**

This Enforcement Notice applies to listed buildings and is similar with an Enforcement Notice in most respects. It can require the removal of any unauthorised works or the reinstatement of the fabric of the listed building that has been removed. There is a right of appeal against such a Notice to the Planning Inspectorate.

## **Conservation Area Enforcement Notice**

This type of Enforcement Notice is used in Conservation Areas when works have been carried out in contravention of the Planning (Listed Buildings and Conservation Areas) Act 1990. An example of this would be the unauthorised demolition of a building or a wall in a Conservation Area, and the requirement of the Notice would be to rebuild it. There is a right of appeal against such a Notice to the Planning Inspectorate.

### **Default Powers (“Direct Action”)**

Section 178 enables the Council to take direct action where, on expiry of the Enforcement Notice compliance period, the required steps have not been taken, by carrying out “default” action directly and then recovering its reasonable expenses from the landowner or through placing a charge on the land. This power relates to Enforcement Notices and untidy land Notices served under section 215 of the 1990 Act (as amended).

### **Article 4 Directions**

These are used to remove “permitted development” rights under the Town and Country Planning (General Permitted Development) Order 1995 (as amended). These have been used successfully to remove the normal permitted development rights to erect fences and other means of enclosure, or temporary uses of land, when open land is being sold off as speculative building plots. The direction is provisional for six months and must be confirmed by the Secretary of State in order to become permanent. It means that planning permission would have to be granted by the Council in order to carry out the development.

In the 2021 update to the National Planning Policy Framework (NPPF) the government has made it clear that the use of Article 4 directions to remove national permitted development rights should, in all cases, be based on robust evidence, and apply to the smallest geographical area possible (NPPF paragraph 53).

### **Section 225 Powers**

Section 225 enables the Council to remove or obliterate placards and posters that are being displayed in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). A notice period of no less than two days must be afforded to the advertiser prior to exercising this power in order to allow for voluntary compliance.

### **Discontinuance Notice**

This Notice requires the removal of an advertisement displayed with the benefit of deemed advertisement consent (i.e. an advertisement that would not normally require consent from the Council to be displayed). A Discontinuance Notice is a useful tool in preventing the display of advertisements where they adversely affect the setting or character of listed buildings or Conservation Areas.

### **Confiscation under the Proceeds of Crime Act 2002**

If an offence is considered to be ongoing at a site under investigation, in certain circumstances the Council will consider instigating confiscation proceedings under the Proceeds of Crime Act 2002. Confiscation proceedings can only be brought alongside a related criminal prosecution. By way of an example, confiscation

proceedings could be used where the offender operates in a manner which involves activity or activities that constitute a breach of planning control.

The Council can consider whether, on the facts known to it, the perpetrator is likely to have benefited from their criminal conduct. If the perpetrator is and has been making money as a result of their planning breaches, and continues in breach, a confiscation order may be appropriate.

### **Localism Act 2011**

In April 2012, new enforcement powers were introduced through the Localism Act 2011. These powers include:

#### **Section 70C**

The Council may decline to determine a retrospective planning application for development which is subject of an Enforcement Notice served after 6 April 2012.

#### **Section 171B – Planning Enforcement Order**

The Council may apply to the Magistrates' Court for a Planning Enforcement Order (PEO) if evidence comes to light that a breach of planning control has been concealed. This prevents the development from becoming immune from enforcement action where it has been deliberately concealed. However, it should be noted that there is a very high bar that needs to be reached to demonstrate deliberate concealment and significant cost implications to the Council should a PEO be quashed or withdrawn, so the use of this power must be very carefully considered and applied.

#### **Section 225A – Removal Notices**

Section 225A allows the Council to remove and dispose of any display structure within the Borough which, in the Council's opinion, is being used for the display of advertisement in contravention of the Town and Country Planning (Control of Advertisements) Regulations 2007 (as amended). This power is exercised once the Council has served a Removal Notice upon the person/s who appear to be responsible for the structure. There is a right of appeal against this Notice to the Magistrates' Court.

## **9. Monitoring Planning Enforcement Performance**

The Council publishes reports on the performance of the Planning Enforcement Service, including the percentage of complaints investigated within agreed timescales, on a quarterly basis on our website and also through the Overview & Scrutiny Committee (Services) and Executive Committee meetings, which are open to members of the public. We will also report this information to the Planning Committees on a quarterly basis, to inform councillors of progress on meeting the

Council's targets as set out in the Corporate Performance Report and to provide updates on significant enforcement cases and controversial sites.

## **10. Updating the Local Planning Enforcement Plan**

Legislation and priorities change over time, so it is recommended that this Plan is reviewed and updated every two years, or as and when relevant new legislation is enacted. It should be noted that the Regeneration and Levelling-Up Bill 2022, proposes some significant changes to the enforcement powers available to local authorities, most notably in respect of the time limit for operational development to become lawful, which is set to increase from 4 years to 10 years. The provisions of this Bill are still going through Parliament, but the Local Planning Enforcement Plan will need to be updated if/once this becomes law



